

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

March 26, 2010

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:02 p.m. in the Council Chambers, 200 East Main Street, on March 26, 2010.

Chairman Brown introduced and welcomed newly sworn member Noel White to the Board and to those in attendance. Members present were Chairman Peter Brown, Louis Stout, James Griggs, Barry Stumbo, Jan Meyer, Kathryn Moore and Noel White. Others present were Jim Hume of the Division of Building Inspection; Chuck Saylor of the Division of Engineering; Jim Gallimore of the Division of Traffic Engineering; Captain Charles Bowen of the Division of Fire & Emergency Services and Rochelle Boland of the Law Department. Staff members in attendance were Jim Marx, Bill Sallee and Wanda Howard.

- II. **APPROVAL OF MINUTES** – Chairman Brown announced that there were no minutes to be considered.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses – Prior to sounding the agenda, the Chairman asked all those present who wished to speak at today's meeting to raise their right hand and be sworn. He administered the oath to numerous citizens in attendance.

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair will announce that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **C-2010-23: FREDERICK COTTON** - appeals for a conditional use permit to provide family child care for up to 12 children, in a Two Family Residential (R-2) zone, on property located at 843 Georgetown Street (Council District 2).

The Staff Recommended: Postponement, for the following reasons:

- a. Additional time is needed to determine if there is sufficient space in the proposed parking and turnaround area on the rear of the subject site for a minimum of two spaces with adequate maneuvering area. This may in turn impact other features of the proposal, in particular the location of fencing and the size of the outdoor play area.
- b. Significant issues relating to the design of the parking and turnaround area are unresolved. Most importantly, the best orientation of the parking spaces needs to be determined, with the goal of minimizing the possibility of a vehicle accidentally moving into the children's outdoor play area.

Representation – The appellant was not present.

Mr. Marx stated that he had been working with this applicant, and believed that he was agreeable to a postponement of this request.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo and carried unanimously to postpone **C-2010-23: FREDERICK COTTON** to the Board's April meeting.

2. **No Discussion Items** - The Chair will ask if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.
- B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2010-29: DEAN L. HENRICKSEN** - appeals for a variance to reduce the required side yard from 6 feet to 0 feet in order to construct a home addition, in a High Density Apartment (R-4) zone, on property located at 1033 Griffin Gate Drive (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, since the adjoining lot where the addition is proposed is owned by the Homeowner's Association and has been preserved as open space.
- b. The current building limitations on the adjoining H.O.A. property, and the presence of sanitary sewer and gas easements at the rear of the subject property, are special circumstances that contribute to justifying a side yard reduction for the small home addition proposed.
- c. Strict application of the Zoning Ordinance would limit an addition on the south side of the property to a width of just 3', which would be of limited value.
- d. The circumstances surrounding this variance request have resulted from the appellant's desire to increase living space on the first floor of the residence, which is understandable and should not be interpreted in any way as intending to circumvent the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The proposed addition shall be done in accordance with the submitted application and site plan, with the understanding that certain architectural features (such as windows) may have to be modified or eliminated to satisfy building code requirements.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Dean L. Henricksen, appellant, and Mr. Bill Bausch, attorney, were present for this application. Chairman Brown stated that he was impressed that the Griffin Gate Association had approved this request. He asked if the appellant would abide by the two conditions recommended by the staff. Mr. Bausch replied in the affirmative.

Mr. Hume stated that the subject building is to have a zero lot line setback. As such, the Building Code will not allow any openings on that wall. He wanted to make sure that the appellant was aware of this so that there will not be any surprises at the time a building permit is sought. Mr. Bausch stated that they understood that they would need to comply with the code, and that a proper building permit would be needed.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously to approve **V-2010-29: DEAN L. HENRICKSEN** – an appeal for a variance to reduce the required side yard from 6 feet to 0 feet in order to construct a home addition, in a High Density Apartment (R-4) zone, on property located at 1033 Griffin Gate Drive, for the reasons provided by the staff, and subject to the two conditions recommended by the staff, noting the requirement that they will need to go through the Division of Building Inspection.

2. **V-2010-30: TOM LUNDERGAN** - appeals for a variance to reduce the required off-street parking by 50% for a proposed restaurant, in a Neighborhood Business (B-1) zone, on property located at 395 South Limestone (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely impact the public health, safety or welfare, nor alter the character of the general vicinity. A restaurant is an established use at this location, and reducing off-street parking requirements will not change in any way how the subject property is developed.

- b. The historical use of the property, its urban location and proximity to the UK campus are all special circumstances that collectively justify a reduction in the required number of off-street parking spaces at this location.
- c. Strict application of the Zoning Ordinance will result in the appellant having to lease 35 parking spaces, rather than 18, at an off-site location. Given the expense of such an arrangement, and the possibility that some leased spaces may not actually be used on a routine basis, such a requirement could be considered as unreasonably restrictive.
- d. The request is best described as the appellant simply trying to establish a viable business use in an urban commercial setting that has depended historically on significant levels of pedestrian traffic and extensive use of on-street, metered parking. No actions have been taken by the appellant to create the need for a variance or otherwise indicate an attempt to unreasonably circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

- 1. The restaurant use shall be established in accordance with the submitted application and site plan, with the understanding that the 50% parking reduction is to be applied to whatever the final parking requirements are determined to be by the Division of Building Inspection for this restaurant use.
- 2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the restaurant.

Representation – Mr. Roger Ladenburger, landscape architect, was present representing the appellant. Chairman Brown asked if this applicant was in the catering business. Mr. Ladenburger replied that this was his brother. Chairman Brown asked if the appellant had read the staff report, and would agree to abide by the two conditions recommended by the staff. Mr. Ladenburger replied in the affirmative.

Action – A motion was made by Ms. Moore, seconded by Ms. Meyer, and carried unanimously to approve **V-2010-30: TOM LUNDERGAN** – an appeal for a variance to reduce the required off-street parking by 50% for a proposed restaurant, in a Neighborhood Business (B-1) zone, on property located at 395 South Limestone, for the reasons recommended by the staff, and subject to the two recommended conditions.

- 3. **V-2010-31: DENNIS ANDERSON INV. 1700, LLC** - appeals for a variance to reduce the required frontage yard for several proposed apartment buildings from 40 feet to a minimum of 10 feet, in a Planned Neighborhood Residential (R-3) zone, on a portion of 1700 Leestown Road (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The overall appearance of the apartment complex will be similar to other multi-family developments in the area, and the reduced frontage yard will allow more usable open space to be provided, as well as a more desirable spacing of the proposed buildings.
- b. The large detention basin, drainage and utility easements and storm sewer easements have constrained the manner in which the apartment buildings can be efficiently arranged on the subject property, while still complying with most of the other design requirements for a Group Residential Project.
- c. Strict application of the Zoning Ordinance would likely result in the apartment buildings being placed closer to the proposed detention basin, with less spacing between the buildings, thereby potentially diminishing the quality of the usable open space and the trail system proposed to serve the Townley Center development.
- d. The circumstances surrounding this variance request have resulted primarily from the appellant's desire to provide as much usable open space as possible, given the size for the area's detention basin, while providing a desirable amount of separation between the multi-family buildings that are proposed. Based on the complexity of how all the required design elements for a Group Residential Project must be integrated, it is inappropriate to consider the request as an effort to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

- 1. The property shall be developed in accordance with the submitted application and site plan, or as amended by the Planning Commission.
- 2. All necessary permits shall be obtained from the Division of Building Inspection and the Division of Engineering prior to construction.
- 3. Action of the Board shall be noted on the Final Development Plan for the subject property.

Representation – Mr. Tony Barrett, landscape architect, was present for the appellant. Chairman Brown asked if the appellant had read the staff report, and if he would agree to abide by the three conditions recommended by the staff. Mr. Barrett replied in the affirmative.

Action – A motion was made by Mr. Stout, seconded by Ms. Moore, to approve **V-2010-31: DENNIS ANDERSON INV. 1700, LLC** – an appeal for a variance to reduce the required frontage yard for several proposed apartment buildings from 40 feet to a minimum of 10 feet, in a Planned Neighborhood Residential (R-3) zone, on a portion of 1700 Leestown Road, for the reasons provided by the staff, and subject to the three recommended conditions.

The votes were as follows:

Ayes: Stout, White, Griggs, Moore, Stumbo, Brown

Abstained: Meyer

The motion for approval carried.

D. Conditional Use Appeals

1. **C-2010-20: INNER CITY BREAKTHROUGH MINISTRIES** - appeals for a conditional use permit to establish a church in an existing building, in a Wholesale and Warehouse Business (B-4) zone, on property located at 824 Winchester Road (Council District 5).

The Staff Recommended: Postponement, for the following reasons:

- a. The required off-street parking that is proposed will result in blockage of the sidewalk that runs along Dayton Avenue. An alternative plan is needed to address that concern, which has safety implications as well as the potential for general disturbance to nearby residents.
- b. There is considerable uncertainty as to where all of the off-street parking that is proposed is actually located, and which adjoining properties will have to enter into shared or leased parking agreements with the appellant. More accurate and detailed information is required to address that issue.

Representation – Pastor Jesse Morris, was present representing Inner City Breakthrough Ministries. Chairman Brown stated that the Board should first hear from Mr. Gallimore in the Division of Traffic Engineering. Mr. Gallimore stated that his office had visited the property a few days ago, and that the revised site plan is “as good as we can get it,” as well as less non-conforming.

Mr. Marx circulated one letter of opposition to the Board, and displayed the revised site plan on the overhead projector. Mr. Marx stated that this revised plan would result in an improvement over the existing conditions at this site.

Chairman Brown asked about the distance from the parking spaces to the building’s entrance. Mr. Marx replied that the distance is about 150 feet.

Mr. Stout asked how many of the parishioners will be walkers. Pastor Morris stated that they would comprise 75-80% of his congregation.

Mr. Marx prepared and distributed a revised set of conditions for the Board to consider. Ms. Moore asked for some time to review the revised recommendation.

Ms. Moore asked if the concern in the letter of opposition was addressed with the proposed change in the off-street parking. Mr. Marx stated that the major concern in the letter was about vehicles blocking the sidewalk, and that this revised layout would alleviate this issue.

Note: To allow the Board time to consider the revised staff recommendation, Chairman Brown proceeded to the next case. Following review of several of the following cases, the Chair returned to this item.

Chairman Brown asked if the Board members had reviewed the revised the revised recommendation from the staff. Several Board members replied affirmatively.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stout and carried unanimously to approve **C-2010-20: INNER CITY BREAKTHROUGH MINISTRIES** – an appeal for a conditional use permit to establish a church in an existing building, in a Wholesale and Warehouse Business (B-4) zone, on property located at 824 Winchester Road, for the following reasons:

- a. Establishing a small church at this location should not adversely affect any of the surrounding properties. An existing, vacant building is to be used for this church, and no new construction will be required. The required off-street parking for a 30-person sanctuary will be provided. Off-street parking along Dayton Avenue will be limited to parallel spaces that can be used without blocking the sidewalk, which represents an improvement over the existing parking conditions on the subject property. Off-site parking is conveniently located on the adjoining property, less than 150' from the building proposed to be converted into a church use. A landscape buffer will be provided along a portion of the subject lot's narrow frontage on Winchester Road.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This motion for approval is subject to the following conditions:

1. The church shall be established in accordance with the submitted application and revised site plan dated March 25, 2010.
 2. An occupancy permit shall be obtained from the Division of Building Inspection prior to beginning the church use.
 3. Sanctuary seating shall be provided for no more than 30 persons within this building.
 4. The proposed landscape buffer at the northwest corner of the property shall consist of at least one small tree and shrubs, designed and installed in accordance with the recommendations of the Landscape Examiner with the Division of Building Inspection.
 5. A shared parking or lease agreement for four off-street parking spaces at 911 Dayton Avenue shall be obtained, subject to review and approval by the Department of Law and the Division of Building Inspection. Said agreement shall include a survey or other documentation that the boundary of 911 Dayton Avenue includes the four parking spaces at the rear of that lot, as depicted on the revised site plan dated March 25, 2010.
2. **C-2010-21: TAMMY BRADLEY MADISON** - appeals for a conditional use permit to increase the number of children at a family child care facility from 10 to 12, in a Planned Neighborhood Residential (R-3) zone, on property located at 1133 Parklawn Drive (Council District 8).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The outdoor play area to be provided will greatly exceed the minimum size required by the Zoning Ordinance, and adequate off-street parking will be available in the existing driveway. Increased activity at this location is not expected to be disruptive, since child care will be limited to daytime hours during the week.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Child care for up to 12 children may be provided in accordance with the submitted application and site plan, with care to be provided only during the week (M-F) between the hours of 6:30 AM and 6:00 PM.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to expanding child care services.
3. The outdoor play area shall be fenced in accordance with the requirements of the Division of Building Inspection, and the dog run and fencing shall be screened with lattice.
4. Care to be provided shall at all times comply with the requirements of the Kentucky Cabinet for Health and Family Services.
5. This conditional use permit shall become null and void should the appellant cease to either own or occupy the subject property.

Representation – Ms. Tammy Bradley Madison, appellant, was present. Chairman Brown asked if she had read the staff report, and the recommendation for approval. Ms. Madison replied in the affirmative. Chairman Brown asked Ms. Madison if she would agree to abide by the recommended conditions. Again, Ms. Madison replied affirmatively.

Ms. Meyer stated that, upon her site visit, some work was on-going outside at this location. She asked if

the fence on this property was to be reinstalled. Ms. Madison replied affirmatively.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously to approve **C-2010-21: TAMMY BRADLEY MADISON** – an appeal for a conditional use permit to increase the number of children at a family child care facility from 10 to 12, in a Planned Neighborhood Residential (R-3) zone, on property located at 1133 Parklawn Drive

3. **C-2010-22: SOUTHERN HILLS UNITED METHODIST CHURCH** - appeals for a conditional use permit to expand the church (kitchen addition and entrance canopy), in a Single Family Residential (R-1C) zone, on property located at 2356 Harrodsburg Road (Council District 10).

The Staff Recommended: Approval, for the following reasons:

- The proposed church additions, totaling just 1,661 square feet in size, should not adversely affect the subject or surrounding properties. Services provided by the church will be enhanced, and access by emergency response trucks in the vicinity of the proposed entrance canopy will be maintained, in accordance with the requirements of the Division of Traffic Engineering.
- All necessary public facilities and services are or will be available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

- The additions shall be constructed in accordance with the submitted application and site plan, with the understanding that some revisions to the proposed truck access drive may be required based on review by the Division of Traffic Engineering and by the Division of Fire & Emergency Services.
- All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
- The design of the proposed truck access drive, as depicted on the submitted site plan, shall be subject to review and approval by the Division of Traffic Engineering and by the Division of Fire & Emergency Services.

Representation – Mr. Larry Hay was present for the appellant. He stated that he had conversed with Capt. Bowen with the Division of Fire & Emergency Services, and that they had agreed to raise the canopy to a minimum height of 13' 6" as a result.

Mr. Marx stated that condition #3 was worded in a way to ensure that the by-pass lane should be designed so that emergency vehicles can navigate through the site. Capt. Bowen stated that the church had agreed to raise the canopy height to meet the Fire Department requirements.

Mr. Marx stated that an additional condition #4 should be added to read as follows:

- The canopy proposed shall have a minimum height of 13' 6".

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs and carried unanimously to approve **C-2010-22: SOUTHERN HILLS UNITED METHODIST CHURCH** – an appeal for a conditional use permit to expand the church (kitchen addition and entrance canopy), in a Single Family Residential (R-1C) zone, on property located at 2356 Harrodsburg Road, for the reasons provided by the staff, and subject to the four conditions recommended by the staff, including the newest one related to the canopy height.

Note: At this time, Chairman Brown returned to **C-2010-20: INNER CITY BREAKTHROUGH MINISTRIES**, above.

5. **C-2010-24: EUGENE BELL** - appeals for a conditional use permit to establish an indoor recreational facility (bouldering gym), in a Wholesale and Warehouse Business (B-4) zone, on property located at 941 National Avenue, Suite 110 (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The indoor recreational facility proposed is relatively small (1,400 square feet) and will involve training activities that do not generate high levels of noise or other potential disturbances. Adequate off-street parking will be provided, and minimal traffic will be generated by the twenty participants that are expected at any given time.
- All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

- The facility shall be established and operated in accordance with the submitted application and site

- plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the facility.
 3. A shared parking agreement or lease shall be obtained for the seven parking spaces to be used at the adjoining property (945 National Avenue), subject to review and approval by the Department of Law and the Division of Building Inspection.
 4. A maximum of 20 participants are allowed to use the facility at any given time, or as further reduced based on occupancy limits set by the Division of Fire and Emergency Services.

Representation – Mr. Eugene Bell, appellant, was present. Chairman Brown asked if he had reviewed the staff report and recommendation. Mr. Bell replied in the affirmative. Chairman Brown asked if Mr. Bell would agree to abide by the four recommended conditions. Again, Mr. Bell replied in the affirmative.

Ms. Moore asked when the gym planned to open. Mr. Bell replied that he hoped to open for business in mid-April.

Action – A motion was made by Ms. Moore, seconded by Mr. Stout to approve **C-2010-24: EUGENE BELL** – an appeal for a conditional use permit to establish an indoor recreational facility (bouldering gym), in a Wholesale and Warehouse Business (B-4) zone, on property located at 941 National Avenue, Suite 110 for the reasons provided by the staff, and subject to the four recommended conditions.

Discussion – Chairman Brown asked if this would be different than a “climbing gym.” Mr. Bell stated that it is smaller and shorter than a climbing gym. Mr. Stumbo asked about the height of the proposed indoor structure. Mr. Bell replied that it was to be 16’ tall. Mr. Stout stated that this activity was for “young people.”

The motion carried unanimously.

6. **C-2010-25: MARVINA CROWDERS** - appeals for a conditional use permit to provide family child care for up to 12 children, in a Planned Neighborhood Residential (R-3) zone, on property located at 360 Chestnut Street (Council District 1).

The Staff Recommended: Approval, for the following reasons:

- a. Providing family child care for up to 12 children at this location during normal working hours on Monday through Friday should not adversely affect the subject or the surrounding properties. Off-street parking and the outdoor play area to be provided will exceed the minimum requirements of the Zoning Ordinance. Chestnut Street is a local street with low volumes of traffic, which should facilitate being able to drop off and pick up children safely at this location.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Family child care for up to 12 children may be provided in accordance with the submitted application and site plan, and limited to Monday through Friday from 6:00 AM to 6:30 PM.
2. All necessary permits, including an occupancy permit, shall be obtained from the Division of Building Inspection prior to opening the facility.
3. A fenced outdoor play area of at least 900 square feet shall be provided and maintained in accordance with the requirements of the Division of Building Inspection. This fenced play area shall be arranged to include a gate across the driveway at the rear corner of the dwelling, or to exclude the paved driveway. Use of the driveway inside of the fenced area shall be restricted to the residents of the dwelling and/or a child care employee.
4. The dropping off and picking up of children on Chestnut Street shall be actively managed to ensure that parents and guardians are assisted as needed and that unattended vehicles are not parked there.
5. Care to be provided shall at all times comply with the requirements of the Kentucky Cabinet for Health and Family Services.
6. This conditional use shall become null and void should the appellant no longer own this property or reside at this location.

Representation – Ms. Marvinna Crowders, appellant, was present. Chairman Brown asked if she had read the staff report. Ms. Crowders replied in the affirmative. Chairman Brown asked if Ms. Crowders would agree to abide by the six recommended conditions. Ms. Crowders replied in the affirmative.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo and carried unanimously, to approve **C-2010-25: MARVINA CROWDERS** – an appeal for a conditional use permit to provide family child care for up to 12 children, in a Planned Neighborhood Residential (R-3) zone, on property located at 360 Chestnut Street, for the reasons provided by the staff, and subject to the six recommended conditions.

E. Administrative Review

1. **ACV-2010-16: ALLTECH, INC.** - appeals for an administrative review to allow a change from one non-conforming use to another non-conforming use (visitor center); a conditional use permit to provide accessory parking in a different zone for the use; and variances to: 1) reduce the required off-street parking by 50%, and 2) reduce the required 100-foot setback from a residential zone for overhead doors to 10 feet, all for the purpose of establishing a distillery packaging and warehouse facility, in a Wholesale and Warehouse Business (B-4) zone; a High Density Apartment (R-4) zone; and a Two Family/Historic District Overlay (R-2/H-1) zone; on properties located at 412, 418, 420 & 428 Cross Street and 737, 741, 753, 757, 761 & 765 Pine Street (Council District 2).

The Staff Recommended: Approval of an overhead door variance, from 100' to 4', for the following reasons:

- a. Granting the requested variance should not adversely impact the public health, safety or welfare, nor alter the character of the general vicinity. The proposed warehouse building will replace several smaller warehouse buildings, some of which have overhead doors much less than 100' from the nearby residential zones.
- b. The relatively long and narrow shape of the subject property, and residential zoning on three sides, are special circumstances that justify a reduction in the required 100' setback for overhead doors.
- c. Strict application of the Zoning Ordinance would make it virtually impossible to construct a reasonably sized warehouse building with all overhead doors at least 100' from the nearby residential zones, which could be considered an unreasonable restriction and a hardship given the B-4 zoning and historical use of the property.

The Staff Recommended: Approval of the requested parking variance, for the following reasons:

- a. A 50% reduction in required off-street parking should not adversely impact the public health, safety or welfare, nor alter the character of the general vicinity. Such a reduction will allow the accessory parking lot to also serve as a maneuvering area for large trucks, which should be beneficial for Pine Street.
- b. The relatively small size and narrow width of the subject property are special circumstances that make it difficult to construct a reasonably sized warehouse building, while also providing adequate maneuvering space for large trucks and the normally required number of off-street parking spaces.
- c. Strict application of the Zoning Ordinance would require such a large reduction in the size of the proposed packaging and warehouse facility that the overall viability of the project would be compromised.
- d. Shared parking and on-street parking exist in this area, as is typical in many near-downtown neighborhoods.

The Staff Recommended: Approval of the requested conditional use permit for an accessory parking lot, for the following reasons:

- a. An accessory parking lot on the R-4 portion of the subject property should not adversely affect any of the surrounding properties. The parking lot will be landscaped, and will serve as a buffer separating the new warehouse building from the adjoining residential property.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommended: Approval of the requested administrative appeal for a change in a nonconforming use, for the following reasons:

- a. The proposed use of the former Ice House as a visitor center is substantially similar to other uses, such as offices and/or a museum, which are first permitted in the Professional Office (P-1) zone. That zone reflects a more restrictive classification than the Wholesale and Warehouse Business (B-4) zone, where shops of special trade (the prior nonconforming use) are first permitted. As such, the proposed change complies with the criteria established in Article 4-3(e) of the Zoning Ordinance for changes in nonconforming uses.
- b. The proposed change in use should not adversely affect the existing or future development of the subject property or the surrounding area. A historic building will be preserved in a manner that allows for public access, and the proposed use as a visitor center will be integrated with the nearby Alltech

distillery and proposed packaging and warehouse facility.

This recommendation of approval is made subject to the following conditions:

1. The accessory parking lot shall be constructed in accordance with the submitted application and site plan, with the understanding that the width of the Pine Street access may have to be reduced by approximately 14' to comply with Article 16-3(d) of the Zoning Ordinance.
2. All necessary permits shall be obtained from the Division of Building Inspection and the Division of Historic Preservation prior to construction and prior to undertaking any renovation activities for the building at 412 Cross Street.
3. The accessory parking lot shall at all times comply with the provisions of Article 16-3 of the Zoning Ordinance.
4. Activities at the visitor center shall be limited to educational and product displays, public relations, and the sampling of products from the distillery, with any retail sales areas limited to no more than 10% of the gross floor area.
5. All overhead doors shall remain closed when not in use.

Representation – Mr. T. Bruce Simpson, attorney, was present for the appellant. Mr. Mike Edwards and Ms. Deidra Lyons were also present for the applicant. Chairman Brown asked if the applicant had any elevations of the proposed building that the Board could review. Mr. Simpson replied in the affirmative, and submitted several for viewing on the overhead projector. Mr. Simpson stated that this proposed use would not generate any more traffic than is currently done at this location by Alltech. Chairman Brown asked what would be produced in this facility. Mr. Simpson replied that it would be whiskey. A number of renderings by EOP Architects were displayed on the overhead projector for the Board.

Mr. Simpson stated that they had already been to the BOAR for approval of the visitors' center, which will be in the old "Ice House."

Chairman Brown asked if the two buildings currently fronting on West Maxwell Street would be demolished. Mr. Simpson replied that those two residential buildings would remain at that location.

Mr. Stout stated that he believed that this facility would add a wonderful attraction. Mr. Simpson agreed.

Mr. Griggs asked if the appellant owned the three properties around the Ice House. Mr. Simpson replied in the affirmative.

Mr. Stumbo stated that he agreed with Mr. Stout, and that this would be a wonderful attraction for the community.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout to approve **ACV-2010-16: ALLTECH, INC.** – an appeal for an administrative review to allow a change from one non-conforming use to another non-conforming use (visitor center); a conditional use permit to provide accessory parking in a different zone for the use; and variances to: 1) reduce the required off-street parking by 50%, and 2) reduce the required 100-foot setback from a residential zone for overhead doors to 10 feet, all for the purpose of establishing a distillery packaging and warehouse facility, in a Wholesale and Warehouse Business (B-4) zone; a High Density Apartment (R-4) zone; and a Two Family/Historic District Overlay (R-2/H-1) zone; on properties located at 412, 418, 420 & 428 Cross Street and 737, 741, 753, 757, 761 & 765 Pine Street, for the reasons provided by the staff, and subject to the conditions recommended by the staff.

Discussion – Chairman Brown asked if samples would be available at the visitor's center. Mr. Simpson replied in the affirmative.

At this time, an unidentified objector stood to address the Board. Chairman Brown asked the objector to speak with Mr. Simpson about the appeal.

Note: Following completion of **A-2010-28: LEE DORSEY**, the Chair returned to this case, and declared a brief recess at 1:51 PM. Chairman Brown reconvened the meeting at 1:58 PM.

Mr. Simpson stated that during the recess, they had met with Mr. Elam and Mr. Burnett, two neighbors concerned about the overhead doors. Mr. Burnett also had some recommendations about screening of his property. Mr. Simpson stated that Ms. Lyons had agreed to add screening of the facility from Mr. Burnett's property.

Chairman Brown asked Mr. Simpson if the applicant was agreeable to condition #5 regarding overhead doors. Mr. Simpson replied in the affirmative.

Mr. Gary Burnett, 722 West Maxwell Street, was present. He stated that his property backs up to this new facility. Mr. Burnett stated that there had never been a sidewalk along the Ice House, but that one is needed there. Alltech representatives had told him that since the Ice House was at a 0' setback, there is no room to construct one along that building. He stated that this was a "city problem."

Chairman Brown asked Mr. Marx if any of the conditions recommended by the staff were now in need of revision. Mr. Marx replied in the negative.

Chairman Brown asked if there was any further discussion of this matter. Seeing none, he asked for a vote on the pending motion for approval of this request.

The votes on the original motion were as follows:

Ayes: Stout, White, Meyer, Griggs, Moore, Stumbo, Brown

Nays: None

The motion for approval carried, 7-0.

2. **A-2010-26: CENTRAL BANK** - appeals for an administrative review to permit the transfer of allowable sign square footage from one street to another street, in a Highway Service Business (B-3) zone, on property located at 649 East New Circle Road (Council District 6).

The Staff Recommended: Approval, for the following reasons:

- a. A single 96 square-foot freestanding sign containing 42 square feet of text, in lieu of two separate 75 square-foot signs, is justified at this corner location. There is a very limited need for signage on Sunshine Lane, and a strong need for enhanced visibility and more attractive signage oriented toward New Circle Road.
- b. The total amount of freestanding signage permitted on the subject property (150 square feet) will not be exceeded, and the proposed portion of the sign containing text will be considerably less than the 75 square feet currently allowable by the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The 96 square-foot freestanding sign proposed may be erected on the property in accordance with the submitted application and site plan, with the exact location to comply with applicable setback and sight distance requirements needs, as determined by the Divisions of Building Inspection and/or Traffic Engineering.
2. A sign permit shall be obtained from the Division of Building inspection prior to erecting the new sign.
3. Any existing freestanding signs on the subject property shall be removed prior to erecting the new sign.

Representation – Mr. David Moore was present for the appellant. Chairman Brown asked if the appellant had read the staff report. Mr. Moore replied in the affirmative. Chairman Brown asked if they would agree to abide by the three conditions for approval. Mr. Moore again replied in the affirmative.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs and carried unanimously to approve **A-2010-26: CENTRAL BANK** – an appeal for an administrative review to permit the transfer of allowable sign square footage from one street to another street, in a Highway Service Business (B-3) zone, on property located at 649 East New Circle Road, for the reasons provided by the staff, and subject to the three conditions recommended by the staff.

3. **A-2010-27: BALL and WRIGHT CAPITAL HOLDINGS** - appeals for an administrative review to allow a proposed wall sign to be transferred from a building wall with street frontage to a building wall with no street frontage, in a Professional Office (P-1) zone, on property located at 998 Governors Lane (Council District 10).

The Staff Recommended: Approval, thus allowing the transfer of wall signage proposed, for the following reasons:

- a. Article 17-7(e)1 of the Zoning Ordinance states that the number of wall signs permitted on a building in a Professional Office (P-1) zone depends on how many building walls have street frontage, and it does not specify that wall signs must be placed on those particular walls in all circumstances.
- b. The number of wall signs permitted at this location will not be exceeded, as the appellant has agreed to not place any wall signs on the building wall that fronts on Beaumont Centre Circle.

This recommendation of approval is made subject to the following conditions:

1. A wall sign not exceeding 5% of the wall area may be placed on the building wall that faces southwest, toward Monarch Street.
2. A sign permit shall be obtained from the Division of Building Inspection prior to placement of the proposed sign.
3. Prior to the issuance of a sign permit, written documentation from the owner(s) of the building shall be provided to the Division of Building Inspection confirming that no wall signs will be placed on the building wall that fronts on Beaumont Centre Circle.

Representation – Mr. Matt Carter, Vision Engineering, was present on behalf of the appellant. Chairman Brown asked Mr. Carter if the applicant would agree to abide by the recommended conditions. Mr. Carter replied affirmatively.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout and carried unanimously to approve **A-2010-27: BALL and WRIGHT CAPITAL HOLDINGS** – an appeal for an administrative review to allow a proposed wall sign to be transferred from a building wall with street frontage to a building wall with no street frontage, in a Professional Office (P-1) zone, on property located at 998 Governors Lane, for the reasons provided by the staff, and subject to the recommended conditions.

4. **A-2010-28: LEE DORSEY** - appeals for an administrative review to determine that a proposed 1,280 square-foot parking and storage building should not be considered an expansion of a non-conforming use (14-unit apartment building), in a Single Family Residential (R-1C) zone, on property located at 110 Delmont Drive (Council District 11).

The Staff Recommended: Approval, and that the decision of the Division of Building Inspection be overturned, for the following reasons:

- a. The existing non-conforming use, an apartment building housing 14 dwelling units, will not be increased in scope or area of its operation because no expansion of the number of dwelling units or of any living space will occur on the site. The proposed accessory structure does not alter the fundamental activity for the non-conforming use, and does not intensify the non-conforming activities on the subject property. Thus, the proposed structure can be permitted and should not be considered an enlargement of a non-conforming use.
- b. The proposed accessory structure, intended for parking and storage for the existing 14-unit apartment building, will not have an adverse effect on the existing or future development of the property, or the surrounding area. Its construction may reduce the demand for on-street parking and will reduce the need for outdoor storage activity on the site, thereby reducing the potential for an adverse impact on the neighborhood and adjoining properties.
- c. Construction of an accessory structure for the existing non-conforming use does not extend the life, nor encourage the survival of the non-conforming use, and views such activity as permitted maintenance of the existing, legal non-conformity.

This recommendation of approval is made subject to the following conditions:

1. The accessory structure shall be used solely for a storage and maintenance area, and for parking of up to a maximum of six vehicles.
2. No water or sewer service shall be provided to the structure.
3. The existing accessory shed on the rear of this property shall be removed either prior to or concurrent with construction of the new building.

Representation – Mr. Lee Dorsey was present for his application. He had spoken with Mr. Taylor, who was present today to object to this application. As a result, he was agreeable to re-routing the gutter drainage from the proposed building to avoid draining onto Mr. Taylor's property. He was agreeable to modifying the structure of the roof's design, in order to be a good neighbor.

Discussion – Mr. Ernest Taylor, 113 Halls Lane, was present to speak to the Board about this application.

Chairman Brown asked the staff if any change was necessary to the recommended conditions. Mr. Marx thought that would be in order.

Mr. Stout stated that they should not allow this to drain on to another property instead of the appellant's property. Mr. Dorsey agreed, and stated that the rainwater drainage could be routed toward the street.

Chairman Brown asked Mr. Dorsey if he had read the staff recommendation, and if he would agree to abide by the recommended conditions for approval. Mr. Dorsey replied affirmatively.

Mr. Marx stated that a revision was being displayed on the overhead, and asked Mr. Saylor to review the revision. Mr. Sallee read the following additional condition as it appeared on the overhead:

4. Rooftop drainage will be directed toward Delmont Avenue, and not toward adjacent properties.

Mr. Saylor stated that he was agreeable to this added condition. He stated that the Division of Building Inspection's Review Board could allow a closer look at this condition at the time any building permit was being sought for this new structure.

Chairman Brown asked Mr. Taylor if the added condition was agreeable to him. Mr. Taylor replied affirmatively. Chairman Brown asked Mr. Dorsey if he also was agreeable to the added condition. He also replied in the affirmative.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stout and carried unanimously to approve **A-2010-28: LEE DORSEY** – an appeal for an administrative review to determine that a proposed 1,280 square-foot parking and storage building should not be considered an expansion of a non-conforming use (14-unit apartment building), in a Single Family Residential (R-1C) zone, on property located at 110 Delmont Drive, for the reasons provided by the staff, and subject to the four conditions recommended by the staff.

Note: Following this case, Chairman Brown returned to **ACV-2010-16: ALLTECH, INC.** above.

- IV. **BOARD ITEMS** - The Chair announced that some students were present earlier at this meeting, no doubt for the Alltech request.
- V. **STAFF ITEMS** – Chairman Brown announced that any items a Staff member wished to present will be heard at this time. There were none.
- VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date will be April 30, 2010.
- VII. **ADJOURNMENT** – Since there was no further business, the Chair declared the meeting adjourned at 2:03 PM.

Peter Brown, Chairman

Jim Griggs, Secretary